

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HOWARD P. STRAIN, )  
Plaintiff, ) Civil Action No. 04-1581  
v. )  
BOROUGH OF SHARPSBURG, ) Judge Lancaster  
PENNSYLVANIA, a Municipal ) Magistrate Judge Caiazza  
Entity, and RICHARD C. PANZA, )  
JOSEPH P. PANZA, LARRY )  
STELITANO, EILEEN RAPINO, )  
VINCENT F. SACCO, ALBERT )  
"PAT" ASTORINO, MARIO FERRARO, )  
ROXANNE MAGNELLIS, AND ROBERT )  
STAPF, in their official and )  
individual capacities, )  
Defendants. )

MEMORANDUM ORDER

On October 17, 2004 this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On June 28, 2006 the magistrate judge issued a Report and Recommendation (Doc. 25 ) recommending that the District Court grant the Defendants' Motion to Dismiss the Amended Complaint (Doc.21) with respect to Count I, with prejudice, deny the motion as to Counts II and III, and defer the decision on Counts IV and V, the pendent state law claims.(Doc. 33 ).

Service of the Report and Recommendation was made on the parties. Objections were filed by the Plaintiff on July, 2006.

(Doc. ). A Response to the Objections was filed by the Defendants (Doc. ) was filed on July, 2006. After a *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections thereto, the following order is entered:

AND NOW, this 24<sup>th</sup> day of July 2006, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss the Amended Complaint (Doc. 21 ) is **GRANTED**, with prejudice, as to Count I, **DENIED** with respect to Counts II and III, and **DEFERRED** as to Counts IV and V, the pendent state law claims.

The Report and Recommendation of Magistrate Judge Caiazza dated June 28, 2006 is hereby adopted as the opinion of the court.



Gary L. Lancaster  
United States District Court Judge

cc:

Francis X. Caiazza  
U.S. Magistrate Judge

Via Electronic Mail

Patricia A. Monahan  
Charles A. Lamberton